



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

January 19, 2006

The Honorable David P. Currier, Chairman
Resources, Recreation, and Development Committee
Room 305, LOB
Concord, NH 03301

RE: House Bill 1737-FN-A, Establishing a Beverage Fee to be Paid by Beverage Manufacturers and Distributors

Dear Representative Currier:

Thank you for the opportunity to comment on HB 1737 which establishes a beverage fee to be paid by beverage manufacturers and distributors. In part, the fee revenues are proposed to be used to support three water-related programs at the Department of Environmental Services (DES): Dam Maintenance; Water Resources, Water Supply Protection and Safe Drinking Water; and Maintenance of In-Stream Flows under the New Hampshire Rivers Management and Protection Program. HB 1737 also proposes to provide resources to support the Land and Community Heritage Investment Program, which protects water quality by preserving open space, as well as revenue to the general fund.

DES takes no position on the policy question of whether a beverage fee should be enacted by the Legislature. DES does support stable, long term funding to maintain and strengthen water programs such as the three included for funding in HB 1737 that have significant benefit to New Hampshire's public health and safety, environment and economy. These three specific programs provide basic state services such as dam maintenance, water supply and resource protection. Each of these programs has funding needs that exceed current revenue sources. They have been included in this bill in recognition by the sponsors of these needs. Additional information is provided below to provide you with an understanding of why these water programs were given high priority for funding by the sponsors.

Dam Maintenance Program

The State of New Hampshire owns 269 dams, including the dams on the largest recreational lakes in the state (Winnepesaukee, Squam, Winnisquam, Newfound, Sunapee, and Ossipee). Many of the state's dams were constructed in the mid 1800's to provide waterpower to fuel the industrialization of New Hampshire and Massachusetts. Most of the dams the state owns are well over 100 years old. Because of age, these dams require continued attention to maintain safe conditions.

The DES Dam Bureau provides for the operation, maintenance, repair and reconstruction of New Hampshire's 269 state-owned dams with funding through the State Dam Maintenance Fund. The sole revenue source to the fund is currently rent payments that DES receives from leasing twelve of these dams to private hydropower developers to generate electricity at the sites. This was a stable source of revenue until 2002 when PSNH renegotiated above-market power purchase agreements with the small power producers from whom they purchase power and effectively bought out or bought down these contracts. The result was an unpredicted 40% drop in revenue to the State Dam Maintenance Fund. At the end of this biennium (June 2007), Dam Maintenance Fund revenues will only be sufficient for annual repayments on the bonds issued when the Fund was created. No money will be available for dam operation, maintenance and repair.

All dams must be continually maintained to ensure that all components are functioning properly. The outlets of the dams also must be constantly managed so as not to cause flooding in the lakes and downstream, and to ensure that the wildlife and public benefits provided by the lakes are maintained. In addition to routine maintenance, DES must perform major repairs or reconstruction on an average of five dams per year. Annual costs for adequate long term funding of this program are in the order of \$1 million per year. To resolve this shortfall, the NH legislature formed a committee in 2004 to study alternatives for funding the operation and maintenance of state-owned dams. While options have been discussed, no permanent funding source currently exists to overcome this short fall. HB 1737-FN could solve this problem.

Recent events in Alstead dramatically illustrate the destructive force of a sudden release of stored water. There, a roadway embankment was overtopped and failed causing loss of life and enormous devastation downstream. Twenty-nine dams are classified as *High Hazard Dams*, the failure of which would cause loss of life downstream, and 53 are *Significant Hazard Dams*, the failure of which would cause significant property damage downstream. In total there are more than 4,000 homes, 130 state road crossings and 800 town road crossings that are exposed to destruction or damage if these state-owned dams were to fail, not to mention the potential loss of life.

Even the breach of any of the *Low Hazard Dams* which do not have significant property at risk downstream could cause major economic impact to the state due to the loss of recreational opportunities and the devaluation of waterfront property associated with the dam. According to the *Report on the Economic Value of New Hampshire's Surface Waters (2002)*, the state's surface waters provide up to \$1.8 billion annually to the state, and waterfront property owners pay nearly a quarter billion dollars annually in property taxes. Since the majority of New Hampshire's surface waters are impounded by state-owned dams, the upkeep of these dams is critical, not only to protect public safety and the environment, but also to maintain the large economic benefits they provide.

In conclusion, a sustainable long term funding source such as proposed in HB 1737 for the Dam Maintenance Program is important for protection of the public safety and is mission-critical for statewide emergency preparedness for water resources events such as occurred in October 2005.

Safe Drinking Water and Water Resources and Water Supply Protection:

There are numerous unmet safe drinking water, water resource and water supply program needs that are important to New Hampshire, and which are beyond the scope eligible for coverage by federal drinking water grant programs. These needs could be partially met by the revenues proposed in HB 1737. Under the proposed broad language in HB 1737, we envision that DES would develop a biennial work plan for presentation to the legislature to set priorities during the state budget process for the use of these dedicated funds.

Awareness and concern for New Hampshire's water resources has steadily grown over the last decade. Unprecedented growth, near drought conditions, and proposals for the commercial use of large quantities of groundwater have contributed towards significant public concern and legislative activity to protect water resources. New Hampshire's laws have been amended over the last eight years to increase the protection of water resources and drinking water. Specifically, legislation has been enacted that establishes:

1. A source water protection land grant program;
2. Large groundwater withdrawal permitting program (RSA 485-C and 485:3);
3. Water conservation program (RSA 485:61);
4. Water user registration and reporting program (RSA 488); and
5. Legislative commissions and committees to develop plans for managing groundwater and water resources (Groundwater Withdrawals Study Commission (SB 155) and Water Resources Study Committee (SB 162)).

No additional funding has come to DES to administer the programs required by the new laws. In addition, there is an inherent need to develop basic data and studies regarding the occurrence, quality and quantity of the state's water resources so that appropriate management of our water can occur. Accordingly, the following describes some important areas which might be supported by HB 1737 revenues:

1. *Source water protection land acquisitions:* This matching grant program, established in 2000 by the Legislature, is currently supported by the state general fund operating budget. The program provides resources to support the acquisition of critical lands around public drinking water sources. Currently only 12% of these critical lands are protected. This program provides 25% of the cost of permanently protecting these lands and has resulted in the protection of over 3000 acres to-date. Funding for the program has come from the general fund at levels that have fluctuated from year to year depending on the general fund status. A permanent funding source would bring stability and predictability to the program for municipalities and other public water suppliers.
2. *Water use Registration and Reporting Program:* Adequate funds are not available to fully administer the water user registration and reporting program required by RSA 488 which became law in 2005. This program requires water users who withdraw, transfer or discharge more than 20,000 gallons of water a day to register and report water use. Currently, only a clerical level position is dedicated to the administration of this program although the Groundwater Commission recommended the addition of at least one technical staff person for this program. There are no resources at this time for staff to inspect and measure water use at facilities in New Hampshire, and for the systematic verification of compliance with groundwater permitting and water conservation required by law.
3. *State match for potential federal grants such as for water resources planning, aquifer mapping and stream gauging.* Examples of program needs where the additional resources proposed by HB 1737 could be used to match available federal monies or develop proposals for federal grants that require state match.
 - *Water resources planning:* New Hampshire has a need to develop a clear vision for the future management of New Hampshire's water resources that includes the assessment of water supply capacity of critical watersheds, development of a complete, integrated picture of our water resources and a clear strategic direction to ensure the long term integrity of New Hampshire's water resources. DES is about to receive a grant of about \$95,000 to start this process and has come up with the match for this initial phase of this effort. However, this will take substantially more resources to complete.
 - *Aquifer mapping:* Mapping of the state's aquifers is in need of upgrading since the mapping technology has improved and land uses have changed from when many of the maps were first produced, some decades ago. There are federal funds that can provide up to 50% for detailed aquifer mapping, but they must be matched by state funds. Currently, New Hampshire receives less than half of the funds that the other states leverage from this program.
 - *Stream gauging:* The federal USGS stream gauging network has been in decline in New Hampshire for years do to the lack of state match for the program. Resources provided by HB 1737 could be used to address this deficiency under any of the three water programs proposed for funding.
4. *Individual home well water quality assessment and education and outreach initiatives.* About 40% of NH's population are supplied drinking water from individual home wells. Funding could be used to continue to assess drinking water quality such as by efforts to identify areas of high naturally occurring contaminants

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such as arsenic, fluoride and radionuclides and to educate homeowners in these areas as well as getting the word out statewide of the importance of periodic water testing.

Maintenance of In-Stream Flows Under the Rivers Management and Protection Act

In 1990, through the Rivers Management and Protection Act, RSA 483, the Legislature directed DES to adopt and administer rules for maintenance of instream flows on designated rivers. Since then, DES with numerous stakeholders and active involvement by the Legislature, has been working on implementation of this task. This involves developing a consensus on how to balance the many public and private uses of our rivers, protection of the natural resources in these rivers, and existing legal and regulatory frameworks, such as riparian rights and the federal Clean Water Act, in a way that reasonably considers both the economic and environmental impacts. Through the in-stream flow pilot programs for the Souhegan and Lamprey Rivers, which are the product of HB 1449 passed in 2002, instream flow protection programs are in progress for two rivers for completion in 2007. These pilot projects are being funded by a one-time special state general fund appropriation and one-time federal grants from EPA and NOAA for this purpose. When the pilot programs are completed, it is expected that these procedures, as adjusted based on "lessons learned", will be applied to all 14 designated rivers to comply with RSA 483. DES estimates that total funding of at least \$3 million will be needed to complete comprehensive studies spread over several years for the other 12 designated rivers and that an annual appropriation of about \$150,000 is necessary for program implementation. Funding does not currently exist for these future efforts. HB 1737 could serve to close this gap.

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Harry Stewart at 271- 3503 or me at 271-3449.

Sincerely,


Michael P. Nolin
Commissioner

cc: Representative Richard T. Cooney
Representative Judith T Spang
Representative Duncan D Chaplin
Representative Mary M Allen
Representative Russell F Ingham
Senator Richard Green
Senator Carl R Johnson
Senator Sylvia B Larsen
Senator Martha Fuller Clark
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